

BRAUNHAGEY & BORDEN LLP

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Attorneys for B&G Foods, Inc.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

PATRICIA DEAN, JOHN GALLOWAY,
and BRIAN BLASSINGAME, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

B&G FOODS, INC.,

Defendant.

Case No.: 2:22-CV-01338-SDW-JSA

**NOTICE OF DEFENDANT B&G
FOODS, INC.'S MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED CLASS
ACTION COMPLAINT AND REQUEST
FOR JUDICIAL NOTICE**

ORAL ARGUMENT REQUESTED

Motion Date: July 18, 2022

To: Kevin Laukaitis
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Attorneys for Plaintiffs and the Proposed Classes

PLEASE TAKE NOTICE that Defendant B&G Foods, Inc. (“B&G Foods”), by and through undersigned counsel, shall move before the Honorable Susan D. Wigenton, U.S.D.J. on July 18, 2022, or as soon thereafter as counsel may be heard, at the Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Court Room MLK 5C, Newark, NJ 07102, for an Order dismissing with prejudice all of Plaintiffs’ claims against Defendant B&G Foods, Inc.

This motion is made pursuant to Fed. R. Civ. P. 8, 12(b)(1), and 12(b)(6) and is based on the following grounds:

1. Plaintiff lacks Article III standing to pursue her claims and seek injunctive relief;
2. Plaintiff’s claims are barred by the doctrine of conflict preemption;
3. the Court should dismiss this case in deference to the FDA’s primary jurisdiction;
4. Plaintiff does not plausibly allege that B&G Foods’ misled her;
5. Plaintiff’s claim for breach of implied warranty fails for the additional reason that Plaintiff cannot allege that the product at issue was not fit for its ordinary purpose; and
6. Plaintiff should not be granted leave to amend her Complaint.

PLEASE TAKE FURTHER NOTICE that, in support of this motion, Defendant shall rely on the Memorandum of Points and Authorities in Support of its Motion to Dismiss; the Declaration of Pratik K. Raj Ghosh, Esq. and exhibits attached thereto, the Request for Judicial Notice, the Declaration of David H. Kwasniewski, Esq. and exhibits attached thereto, and upon the pleadings and all prior proceedings in the above-captioned action.

PLEASE TAKE FURTHER NOTICE that a proposed form of Order is also submitted herewith.

PLEASE TAKE FURTHER NOTICE that this motion is being made returnable on July 18, 2022 pursuant to Local Rules 7.1 and 78.1.

PLEASE TAKE FURTHER NOTICE that oral argument is requested.

Dated: June 14, 2022

Respectfully Submitted,

By: *s/ Mitchell Stein*

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